STATE OF MICHIGAN

COURT OF APPEALS

JOSEPH FOUNTAINE,

Plaintiff-Appellant,

v

SINGH OF NORTHRIDGE LIMITED PARTNERSHIP AND SINGH MANAGEMENT, L.L.C.,

Defendants-Appellees.

UNPUBLISHED
August 29, 2006

No. 260006
Oakland Circuit Court
LC No. 04-056708-NZ

Before: Saad, P.J., and Jansen and White, JJ.

PER CURIAM.

Plaintiff appeals the trial court's order that granted summary disposition to defendants. We affirm.

Plaintiff alleges that he sustained injuries when he slipped and fell on ice in the parking lot of defendants' apartment complex. Plaintiff contends that the trial court erred when it granted summary disposition to defendants because he established that defendants had notice of the icy conditions that caused his fall.[1]

[1] We review de novo an appeal from an order granting summary disposition pursuant to MCR 2.116(C)(10). *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). A motion for summary disposition pursuant to MCR 2.116(C)(10) should be granted when the moving party is entitled to judgment as a matter of law because there is no genuine issue of material fact. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). A genuine issue of material fact exists when reasonable minds could differ after drawing reasonable inferences from the record. *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). In reviewing this issue, the Court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence and construe them in light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). If the nonmoving party would bear the burden of proof at trial, that party must show there is a genuine issue of material fact by setting forth documentary evidence. *Karbel v Comerica Bank*, 247 Mich App 90, 97; 635 NW2d 69 (2001). A nonmoving party "cannot simply rest on mere conjecture and speculation to

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To establish premises liability, a plaintiff must prove the following: "(1) a duty owed to the plaintiff by the defendant; (2) a breach of that duty; (3) causation; and (4) damages." *Hampton v Waste Mgt of Michigan, Inc*, 236 Mich App 598, 602; 601 NW2d 172 (1999). Generally, a premises possessor has a duty to protect invitees from known dangerous conditions on the land.[2] *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 96; 485 NW2d 676 (1992). A premises possessor may have knowledge of a dangerous condition through either actual or constructive notice. *Hampton*, *supra* at 604.

Here, plaintiff presented no evidence to show that defendants had actual notice of the icy pavement. In fact, not one witness testified that defendants or its employees were actually aware of an icy condition in the parking lot near building 36 on April 10, 2003. Accordingly, we must consider whether defendants had constructive notice of the condition. For constructive notice to exist, an unsafe condition must have existed for a length of time sufficient for the premises owner to discover it. *Berryman v K Mart Corp*, 193 Mich App 88, 92; 483 NW2d 642 (1992).

Plaintiff has not established a genuine issue of material fact about whether the icy condition existed for a sufficient length of time because he failed to submit any evidence about the condition shortly before his fall. On the contrary, plaintiff has only offered speculative information about how the ice may have formed. Specifically, plaintiff presented weather reports that showed that temperatures were below freezing on the night before his fall and that there were small amounts of precipitation during the week before he fell. Plaintiff also submitted maintenance records that showed that defendants and a snow removal company had salted certain areas of the apartment complex a few days before he fell. In his deposition, plaintiff recalled that there was an ice storm sometime during the night before he fell or during the prior weekend. On that basis, plaintiff merely asserts that the ice probably formed from melting snow and he concludes that this is why the sidewalk was salted. Despite this, plaintiff conceded that he neither knew how long the ice had been in this area nor did he know the actual source of the ice. Moreover, plaintiff admitted that he did not know if someone else had spilled something in the area before he arrived.

In light of these admissions, plaintiff's theory that defendants had notice of the icy condition only amounts to speculation. It is also possible that one of the maintenance technicians responsible for checking the parking lot noticed ice on the sidewalk and put salt there, but did not put salt in the parking lot area where plaintiff fell because ice was not present until shortly before plaintiff arrived. Indeed, maintenance technician Jonathan Klaus stated that it was defendants' intention to salt the parking lot if ice was present and this supports the inference that the ice formed only a short time before plaintiff fell. Therefore, because another plausible theory exists to explain why the parking lot area was not salted, plaintiff's theory is only speculative that the

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meet the burden of providing evidentiary proof establishing a genuine issue of material fact". *Altairi v Alhaj*, 235 Mich App 626, 628-629; 599 NW2d 537 (1999).

[2] While the record does not indicate whether defendant was house sitting or living at the apartment, it is clear that defendant was a social guest, and therefore, an invitee, because he admitted that he was not a tenant and did not pay rent. See *Petraszewsky v Keeth* (*On Remand*), 201 Mich App 535, 540; 506 NW2d 890 (1993) ("the duties owed by a landlord to social guests of a tenant are duties owed to invitees, not licensees").

ice probably formed from melting snow and that defendants had notice because they salted the sidewalk. See *Skinner v Square D Co*, 445 Mich 153, 164-165; 516 NW2d 475 (1994) (A theory is speculative even when reasonable and supported by the evidence when there are other equally plausible explanations for the same event). Moreover, again, plaintiff admitted that he did not know when or how the ice formed. Therefore, because plaintiff has relied on mere conjecture and speculation to establish how and when the ice formed, he has not presented evidence to create a genuine issue of material fact on the issue of defendants' constructive knowledge. *Altairi v Alhaj*, 235 Mich App 626, 628-629; 599 NW2d 537 (1999).[3]

In light of our resolution of this issue, we need not address defendants' argument that the condition was open and obvious.

Affirmed.

/s/ Henry William Saad
/s/ Kathleen Jansen

[3] While the dissent highlights selected evidence that the dissent believes establishes that defendant should have known about the condition of the parking lot, what is missing, except by pure speculation, is evidence of when the ice actually formed. Absent such evidence, plaintiff cannot establish that defendant had constructive knowledge of the condition that allegedly caused plaintiff's injury.